JD(ATL)–60–04
Chapel Hill, NC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

and **CASE 11–CA–20238**

LINDA WEISEL

Ronald P. Morgan, Esq. and
Shannon Renee Mecues, Esq.,
Counsel for General Counsel.
William P. Barrett, Esq. and
Terrence D. Friedman, Esq.,
Counsel for Respondent.

DECISION

Statement of the Case

A hearing was held in Chapel Hill, North Carolina on June 22, 23 and 24 and August 2–5, 2004. I have considered the entire record and briefs filed by Respondent and General Counsel in reaching this decision.

Jurisdiction

At material times Respondent has been a non–profit North Carolina corporation with a facility located in Raleigh, North Carolina where it is engaged in the business of providing legal services for inmates of the North Carolina prison system. During the past 12 months, a representative period, Respondent in the course of its business operations had a gross volume of business in excess of $250,000 and it purchased and received at its Raleigh facility goods and materials valued in excess of $50,000 directly from points outside North Carolina. In view of its admissions and the full record I find that Respondent has been an employer at all material times engaged in commerce within the meaning of the National Labor Relations Act.

Preliminary matters:

Respondent is a law firm. Its clientele is limited to prisoners in the North Carolina Department of Corrections (DOC) system. Respondent's employees include management personnel headed by an executive director with exclusive hire and discharge authority over employees, supervisors, staff attorneys, paralegals and support staff. A board of directors governs Respondent and that board has exclusive hire and discharge authority over Respondent's executive director.

Respondent does not bill the prisoners it represents. Instead almost all it's funding is provided under a contract with the DOC.[1] Under that contract Respondent's work product is measured in billable hours. The record showed that attorneys actually work in excess of hours that qualify as billable hours. Until the events material to this litigation, each week some attorneys routinely worked 40 billable hours and others worked fewer than 40 billable hours.[2] The attorneys that routinely worked 40 billable hours received full fringe benefits. The reduced hours[3] attorneys[4] that regularly worked 30 or more billable hours each week also received benefits.

Evidence supporting the complaint allegations includes the following:

Early 2003:

Respondent attorney Kari Hamel asked Executive Director Michael Hamden for maternity benefits including benefits under Respondent's short–term disability practice. Respondent routinely granted maternity leave and it did so for Hamil but Respondent did not agree to Hamil's request for short–term disability benefits. Subsequently Hamel's attorney wrote Respondent's Board of Directors that it was unlawful for it to deny its employees short–term disability benefits. Hamel and other employees discussed her claim for short–term disability benefits at and away from Respondent's office.

July 22, 2003:

Kari Hamel filed an EEOC charge against Respondent on behalf of herself and others similarly situated, alleging that Respondent had illegally denied her claim for short–term disability benefits during maternity leave.

---

1 DOC was directed to provide legal services to prisoners by a case referred to as the "Bounds" decision. Respondent cited that case as ***Smith v. Bounds***, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 272 (1977).

2 Five attorneys worked reduced hours. One, Eleanor Kinnaird, was a part–time employee. The other four, Pollitt, Weisel, Parks and Hamil, were considered full–time employees on reduced–hours schedules. Susan Pollitt and Linda Weisel worked reduced hours from 1992. Kristin Parks started working reduced hours when she returned from maternity leave in January 2002. Kari Hamel worked reduced hours from after the birth of her first child in the summer 2003.

3 For example, Susan Pollitt testified that her routine work schedule in 2003 and for some 10 years before 2003 was to bill 32 hours a week. In order to make up 32 billed hours she would customarily work between 37 and 40 hours. She received reduced pay and benefits including vacation, contribution to 401K, and life insurance while on that reduced hours schedule. During that time Pollitt was eligible for full health benefits coverage.

4 There were also other non–attorney employees that worked reduced hours.

August 8, 2003:

Seventeen employees signed a petition to the Board of Directors on and before August 8 that included among others, the following paragraph:

> *We understand the Board will be discussing the NCPLS short–term disability plan and how it applies to female employees after childbirth. As employees of this organization, we want to let the Board know how important our benefits are to us. We hope short–term disability insurance will remain a benefit for NCPLS employees and that it will apply to temporary disability arising from pregnancy and childbirth as it does to any other short–term disability.*

That petition was distributed to others including some supervisors, on August 8, 2003.

August 12, 2003:

Susan Pollitt and Kristin Parks[5] testified about an August 12, 2003 staff meeting. During that meeting supervisors and employees engaged in a sometime heated discussion regarding the employees' petition supporting Kari Hamel's request for short–term disability benefits. Supervisor Brenda Richardson[6] held up a copy of the employees' petition during the August 12 staff meeting and asked what is this. Richardson said, we need to talk about this and Phil Griffin slapped his hand on a table and said, "This is beneath contempt." Brenda Richardson questioned Kari Hamil about why she couldn't arrange her leave to cover her disability after birth of her child and Richardson quizzed Kristin Parks about whether she felt she had been discriminated against.

August 13, 2003:

Elizabeth Hambourger[7] testified that Michael Hamden asked her to come into his office on August 13. Hamden said that he felt it was his fault about the events in the August 12 staff meeting and that he had not realized the extent of the factionalism in the office. Hamden said that things were going to change and that he had been too indulgent with the staff. He said it would have been better for us to come to him about short–term disability than to have gone to the Board. Hamden said that as a result of the employees having gone to the Board it would probably mean that the employees would be less likely to achieve what they had set out to achieve with the petition. Hambourger asked what he meant by that and Hamden answered that because of this letter he could not ask the Board to give the staff raises. He said that because of this

---

5 Kristin Parks as well as Kari Hamel took maternity leave in 2003.

6 Richardson testified that she supervised the work of three support staff employees. Support staff employees answer the phones, open mail, copy documents; maintain the file room, close files and other of those sorts of duties. Richardson evaluates and makes recommendations on support staff to higher supervision. She has worked for Respondent for about 6 years. [See GCExh. 2.]

7 Hambourger was the field attorney that drafted the employees' petition to the Board.

letter we were now "less likely to get a parental leave policy put in place." Hambourger asked why was that and Hamden answered that "when the Board gets the letter they will be angry; they will think that the letter indicates that the staff feels entitled to things and they will want to show the staff that they're not entitled to these things by withholding things." Hamden told Hambourger that she should not have known how the Board would react but "senior attorneys should have known better."[8] He said that he assumed that it was not Hambourger's idea to write the letter.

Michael Hamden did not deny that he called Hambourger in on August 13. However, he testified that he called her in order to express his appreciation for her leadership in taking heat over the petition. Hamden also testified:

> *"I – you know I might have discussed with her that the – my idea that this was not a good strategy. The Board has always been very supportive of our Program and all of our staff. They have always done the very best they could for us in terms of salaries and benefits. And I don't think it is a productive exercise to attack or implicitly attack the Board when your objective is for enhanced benefits. I think a better approach would be to recognize the history of the Board and to commend them for that and to ask them for additional benefits. I think we discussed that."*

Hamden denied telling Hambourger that he would not ask for staff pay increases because of the petition. He admitted that he may have told her the Board would not be receptive to an attack. Michael Hamden denied that he told Hambourger that he would retaliate against the employees because of the petition.

August 15, 2003:

Michael Hamden, Brenda Richardson, Rick Lennon and Jimmy Carter were present on behalf of management for the August 15 Board of Directors' meeting. Elizabeth Hambourger was also there. Rick Lennon told the Board they had been planning to grant wage increases but because of employee complaints and ongoing litigation, they were not going to recommend raises.

Michael Hamden testified that before the August 15 Board meeting, he asked Rick Lennon his opinion of whether they should go forward with their recommendation to the Board for a staff salary increase. Hamden believed that meeting with Lennon was on the day before August 15. He had independently concluded that they should not go forward with the recommendation for a salary increase and Lennon said that he had concluded they should not recommend a pay raise to the Board. Hamden said that the employees' petition was not a consideration in determining not to recommend a pay increase. When asked the basis for the recommendation to not go forward with the pay increase, Hamden testified:

> *Well, there were a number of factors, significant ones included the fact that our*

[8] Susan Pollitt and Linda Weisel were Respondent's most senior field attorneys.

> *employees, two of our – one of our employees had asserted a claim of entitlement to paid leave, which we had not budgeted or planned on. We had a second employee in virtually the same circumstance. There was pending an EEOC complaint. We didn't know what would be involved in the defense of that. We were 1200 hours behind on our contract. We had some uncertainties to deal with respect to the file management software. And we did not have an idea of what the cost of relocating the office would be. So all of these things were factors. There was a great deal of uncertainty.*[9]

Michael Hamden admitted Respondent has generally increased salaries once they had a contract with DOC.

Hamden testified that on August 15, the Board repealed the employees' extended (short–term) illness policy. He did not recall making a recommendation in that regard. The Board directed Hamden to investigate the cost of short–term disability insurance and to canvas the staff for their opinions on short–term protection. Hamden did recommend a short–term policy during the November 2003 Board meeting. That recommendation was approved. A short–term insurance policy was purchased and became effective in December 2003.

Brenda Richardson called Hambourger into Richardson's office on the afternoon of August 15. Richardson told Hambourger that she apologized for her conduct in the August 12 staff meeting and that she knew that what had happened was not Hambourger's fault because it was not her idea to write the letter. She said that the only reason Hambourger had written the letter was because she was a good friend of Kari. Hambourger agreed that she was motivated by her friendship with Kari Hamel and wanted to support the lawsuit but also because she supported what was contained in the letter. Richardson cautioned Hambourger that just because others in the office were nice to her[10] did not mean they are her friends and that she felt they had convinced Hambourger to write the letter for their own purposes. Hambourger replied that was insulting but she accepted Richardson's apology.

August 18, 2003:

There was a meeting between Michael Hamden and all senior attorneys at 1:30 p.m. on August 18, 2003. Present at that meeting were Richard Giroux, Linda Weisel, Phillip Griffin, Susan Pollitt, Latisha Eckels, Ken Butler, Kristin Parks, Kari Hamel and Michael Hamden. Hamden spoke and said that in view of a deficit existing in the contract hours owed to the Department of Corrections,[11] factionalism that had plagued the office, an impending move of the office and a planned new computer

---

9 The claim for entitlement to paid leave and the EEOC complaint involved Kari Hamel's request for short–term disability benefits.

10 At that time Hambourger generally associated with Kari Hamel, Kristin Parks, Susie Pollitt, Linda Weisel and Tracy Wilkinson.

11 Respondent is principally funded through a contract with DOC. That contract anticipated Respondent's employees would work a certain amount of hours during the term of the contract. Not all work time was counted. Instead hours that qualified as work under the DOC contract were called "billable hours."

system; he would announce a proposal the following day which would not be supported by the senior attorneys.

August 19, 2003:

Board of directors member Barry Nakell visited the office during the August 19 staff meeting. He told the staff that the matter of Kari Hamel's request[12] had been hotly debated among the directors but had not been resolved as of that time. Nakell told the staff that the Board fully supported Director Michael Hamden. Nakell left before the staff meeting concluded.

When the meeting continued Michael Hamden told the staff that on August 15 the Board rescinded Respondent's extended illness policy.[13] Hamden stated that Respondent had outstanding problems including a contract hours deficit, factionalism in the office,[14] a pending office move and a planned new computer system. He then announced a proposal that starting September 1, 2003 all employees[15] would have to work 40 billable hours each week to qualify for benefits and, additionally, everybody would have to work eight hours overtime for a total of 48 hours per week. That practice would continue from September 1 until November 15, 2003. The staff would then break from that practice for the holidays but if they had not achieved some goals, the 48–hour per week practice would resume on January 16, 2004. Michael Hamden said that was his proposal and he was giving the staff one week for its input. Hamden said he would announce his decision during the August 26 staff meeting. In response to questions Hamden explained that under his proposal there would no longer be reduced hour with benefits employment.[16]

Hamden admitted that he met with the staff on August 19.

August 22, 2003:

Michael Hamden and Rick Lennon meet with the staff on August 22 and explained employee benefits. Linda Weisel and Susan Pollitt presented Hamden with a response to his August 19 proposal.[17]

---

12 Nakell was referring to Hamel's request for short–time disability benefits during her maternity leave.

13 The term "extended illness policy" refers to Respondent's short–term disability benefits.

14 Michael Hamden testified that factionalism had been a problem since at least the day he was hired as executive director and that it has probably been a problem since 1990.

15 Hamden referred to full time employees. That term included reduced–hours employees that worked a minimum of 30 billable hours each week as well as attorneys that worked 40 billable hours each week. Employees that normally worked less than 30 billable hours per week were not entitled to benefits and were sometimes referred to as part–time employees.

16 Susan Pollitt testified that Hamden's August 19 proposal would eliminate reduced hours for five women attorneys. Before August 19 five attorneys routinely worked fewer than 40 billable hours each week. Those five were Eleanor Kinnaird, Linda Weisel, Kari Hamel, Kristin Parks and Susan Pollitt. Eleanor Kinnaird routinely worked 10 to 20 billable hours a week and was considered a part–time employee. Linda Weisel, Kristin Parks and Kari Hamel routinely worked 30 billable hours and Susan Pollitt routinely worked 32 billable hours, each week.

17 GCExh. 10.

August 23, 2003:

Michael Hamden met with Kristin Parks on August 23.[18] He asked Parks if she knew that some members of the staff had gone to the Board behind his back. Hamden said that was not the way to get things done around here. He told Parks, "I'm not going to have that kind of thing anymore." Parks told Hamden that she wanted to talk about the 48–hour a week issue and how badly it would impact on people with families. Hamden mentioned Susan Pollitt and Linda Weisel as causing the problems for him and that they continued to undermine his authority and stir up trouble. Hamden said that he just couldn't put up with it anymore. Parks asked why did Hamden always take things out on Susie and Linda when it was Phil Griffin that was causing problems in the office. Hamden replied that Phil did not matter because no one looks up to him and no one follows him so it doesn't matter what Phil does. The difference is that people respect Linda and Susie and follow them.

Hamden admitted that he met with Kristin Parks. He denied that he told her "that Linda's and Susie's visit to Barry or their meeting with Barry was 'not the way things are done around here and that (he wasn't) going to accept it."[19] Hamden testified that he did not recall discussing with Parks, Linda and Susie's meeting with Barry. He did not recall any discussion about undermining his authority. Hamden did not recall telling Parks that he could still require employees to work 40 hours a week but he admitted that he never had any question but that he could require employees to work 40 hours a week. He denied telling Parks that any change in schedules would be because employees think that a reduced hours schedule is an entitlement. Hamden admitted that maybe a month later he made a comment that he was not concerned with making up the contract hours and that he was confident Respondent would make up the contract hours deficit. Michael Hamden then testified,

> *"What concerns me is the unending contention, in the office, the unending factionalism, that's a concern. How are we going to deal with that."*

August 26, 2003:

On August 26 Hamden told the staff that no one had fully supported his August 22 proposal and he had decided not to require 48 hours work each week. Hamden said that there would be workload goals that everybody would have to meet. Each attorney would have to get his or her files down to 120 and the attorneys would communicate with their clients in accord with an office memorandum. Additionally, there would be a complete restructuring of the office.

Kristin Parks testified that she went to Hamden's office on August 26 and

---

18 Kristin Parks phoned Michael Hamden on August 22, 2003 and asked to meet with him after learning he had proposed that all employees work 48–hour weeks. She and Hamden met on August 23.

19 Susan Pollitt, Linda Weisel and others had met with Board Member Barry Nakell to discuss the short–term disability policy issue.

thanked him for discarding the 48–hour week. Hamden said, "Well, you know, I could still do 40 hours a week if that's what I choose to do." Parks replied that he should understand that she could not work 40 hours a week. Kristin Parks testified that she had several conversations with Michael Hamden regarding reduced hours workweeks. During one of those conversations, Hamden said, "it's not because of the contract hours and it's not because of the money for the benefits, but it's because some people here think it's an entitlement to work part–time".

October 1, 2003:

Kari Hamel went into Hamden office on October 1, 2003. She told him she appreciated the work schedule. Michael Hamden replied that people in the office believed the work schedule was an entitlement and people were not grateful.

Also on October 1, 2003 Michael Hamden came to Susan Pollitt's office. Hamden said that he was going to change the rule so there would no longer be reduced hours employment. Everybody would have to bill 40 hours a week in order to be full–time. Pollitt asked why he was taking that action. Hamden replied there was the matter of deficit in the *Bounds*[20] hours owed under the Department of Corrections contract[21] but it wasn't just that. He said that his action was also due to the hostility that he had received in August in response to his proposal. Hamden said that he could not lead an organization unless everyone was on the same footing. He couldn't take that kind of hostility that he had in August and Hamden said that, "Linda Weisel and (Pollitt) had threatened gender litigation in (their) letter."[22] Hamden said that Weisel and Pollitt had claimed working reduced hours was an entitlement and he was going to require 40 hours a week. Pollitt testified that Hamden said nothing in that conversation to the effect that requiring 40 hours per week was a temporary measure.

Later on October 1, 2003, Hamden emailed employees that effective January 1, 2004, 40 hours would be required to qualify as a full–time employee (GCExh. 17).[23] Kristin Hamel went to Michael Hamden on October 1 and asked if she relinquished her benefits and worked less than 40 hours a week would she still have a job. Michael Hamden told her he would consider her request and get back to her. Hamden did not get back to Hamel on that question and Hamel decided she would quit her job because she was unable to work 40 billable hours a week.

In regard to the October 1 email, Hamden did not dispute that he sent employees GCExh. 17. What he did dispute was the permanent nature of that message. He

---

20 "Bounds" is sometime used in referring to a lawsuit that resulted in the creation of North Carolina Prisoners Legal Service. "Bounds" is also used in referring to Respondent's funding contract with DOC. Respondent has been party to several contracts with DOC. The current contract is for 3 years and expires on September 30, 2005.

21 In the event of Respondent's failure by the termination date of the contract, to provide billed hours as required by the Bounds contract, DOC had the contractual authority to seek return of unaccounted funds.

22 *See GCExh. 10.*

23 Before that time reduced hours employment in excess of 30 billable hours per week was considered full time even though reduced hours employees received only a portion of some fringe benefits.

testified that GCExh. 17 announced a temporary change.[24] Hamden also testified that he met with Kari Hamel, Kristin Parks and Susan Pollitt individually before he sent GCExh. 17 and told each of them of the upcoming change. He testified that he had also planned to meet with Linda Weisel but she was out of the office. Hamden recalled that of his conversations with Hamel, Parks and Pollitt, only in the conversation with Pollitt did the question come up of whether the change was temporary. He testified that he told Pollitt the change was temporary.

Several employees including Kristin Parks;[25] Eleanor Kinnaird;[26] Linda Weisel;[27] and Kari Hamel[28] resigned after Respondent's October 1, 2003 announcement that effective January 1, 2004 all employees were required to bill a minimum of 40 hours.[29]

November 14, 2003:

The Board approved the purchase of a short–term disability policy carried by an insurance company.[30] That policy which was effective on December 1, 2003, specifically included short–term benefits during maternity. The Board also approved payment of short–term disability benefits for Kari Hamel and Kristin Parks resulting from each one's 2003 maternity leave.

December 2003:

Linda Weisel gave notice of her resignation in December 2003. Michael Hamden recalled that around December 3 or 5, 2003, Weisel told him she was resigning.

THE UNFAIR LABOR PRACTICES?

General Counsel alleged that Respondent threatened employees and retaliated against employees because of their protected concerted activities. In consideration of those allegations I shall initially consider whether the employees engaged in concerted activity, which falls within the scope of the Act's protection. Secondly I shall consider whether the evidence supports a finding that Respondent demonstrated animus toward those concerted activities and whether there was a nexus between the concerted activity and Respondent's alleged unlawful acts.

---

24 Hamden subsequently emailed the employees on December 11, 2003 stating, among other things, that the 40–hour minimum workweek was a temporary measure. He admitted that Linda Weisel had told him of her plan to resign a couple days into December like on December 3 or 5, 2003.

25 Parks resigned in November 2003.

26 Kinnaird resigned in December 2003.

27 Weisel resigned in December but continued to work until late January 2004.

28 Hamel resigned on December 31, 2003.

29 Hamden testified that the 40 minimum hours requirement affected members of the support staff as well as Rick Lennon and Brenda Richardson, in addition to the four reduced hours attorneys.

30 The earlier short–term benefits were self–funded.

The record regarding protected concerted activities:

As shown above the complaint included allegations among others, that Respondent retaliated because of various protected concerted activities by its employees. The alleged protected concerted activities include an EEOC change[31] filed by one employee and discussed among several employees; employees' discussions about, preparations of, and distribution of, a petition to Respondent's board of directors supporting a request for short–term disability benefits during maternity leave; and concerted opposition to an announced proposal to require 48–hour workweeks.

In early 2003 employee Kari Hamel requested benefits for maternity leave. In addition to leave Hamel asked for short–term disability benefits. Hamel discussed her claim for short–term benefits with other employees and she filed an EEOC claim on July 22, 2003 against Respondent for denying her those benefits. Subsequently in early August 2003 several employees discussed, prepared, signed and distributed a petition to Respondent's board of directors supporting Hamel's claim for short–term benefits.

Before giving birth on March 6, 2003, Hamel spoke to Michael Hamden, James Carter, Gary Presnell, Barry Nakell and Rick Lennon regarding her eligibility for benefits. Hamden was Respondent's executive director. Carter was the Assistant Executive Director and Lennon was the financial officer. Both Presnell and Nakell were members of the board of directors. Presnell was president of the Board and Nakell was a member of the Board's disciplinary committee.

The parties stipulated that Hamel claimed short–term disability coverage for maternity and that she filed an EEOC charge.[32] From February 2003 Hamel discussed her claim with other employees. Those other employees included Kristin Parks, Elizabeth Hambourger, Susan Pollitt and Linda Weisel. Kristin Parks was also pregnant at the time of those discussions. Hamel testified that she phoned Susan Pollitt and Elizabeth Hambourger and asked for their approval for her filing EEOC charges. Pollitt and Hambourger told Hamel she had their approval and support in filing with EEOC.

Elizabeth Hambourger learned of the dispute between Kari Hamel and management in mid–March 2003. She discussed the matter with others including Susan Pollitt, Linda Weisel, Kristin Parks, Tracy Wilkinson and Eleanor Kinnaird. After Hamel filed her EEOC charge, Kristin Parks discussed the EEOC charge with other employees. In August 2003, Hambourger took some writing from Ellie Kinnaird and completed a petition[33] to the board of directors. She received input from Pollitt, Billy Sanders, Ellie Kinnaird and others. Hambourger and Susan Pollitt then solicited other employees to sign that petition. She also spoke to Respondent assistant director Jimmy Carter about the petition.

---

31 The EEOC charge alleged that Respondent discriminated against its employee and other employees by denying short–term disability benefits to employees on maternity leave.

32 Hamel testified that she filed the EEOC charge on behalf of herself, and any persons in the past, present or future.

33 GCExh. 5.

Kristin Parks, who as shown above, was also pregnant in 2003, testified that she talked with Michael Hamden around February 27, 2003. Parks told Hamden she had talked with Kari Hamel the day before and Kari had said that she was having ongoing discussions with Hamden and Jimmy Carter about short–term disability benefits for pregnancy. Parks told Hamden that she was confused about the situation and had called a friend that is an employment defense attorney. The friend told her that if a small office chooses to have short–term disability it could not exclude pregnancy. Hamden asked Parks if she had shown the attorney Respondent's policy and procedural manual and Parks replied that she had told the attorney about the policy. Hamden told Parks that he would not be threatened by her or by anyone else. During her pregnancy leave and after she returned to work in June, Parks talked to other attorneys including Kari Hamel about whether employees should receive short–term disability benefits for pregnancy. She also spoke with supervisors Ken Butler and Jimmy Carter about short–term disability benefits during maternity leave. After Parks returned to work she talked with Karen Hamel about Hamel's EEOC charge. She learned that her name had been signed to the petition for short–term disability during pregnancy leave. Parks testified that she agreed with the position expressed in that petition.

Susan Pollitt testified that she learned that Hamel was seeking short–term disability benefits in conjunction with Hamel's maternity leave, in early 2003. Pollitt discussed Hamel's request for extended illness[34] coverage with other employees and in July 2003, with supervisor Jimmy Carter. She told Carter that Respondent needed to stop fighting Kari Hamel's claim for benefits under the extended illness policy. Pollitt also discussed Hamel's extended illness request with employees Linda Weisel, Kristin Parks, Kari Hamel, Elizabeth Hambourger, Richard Giroux, Latish Eckels, Eleanor Kinnaird, Katie McDonald and others. Those discussions occurred in February, March, June and July 2003 and on a frequency of at least two discussions each week. Pollitt, Elizabeth Hambourger and Kristin Parks discussed Hamel's plan to file the EEOC complaint with Hamel before July 22.

Some of the attorneys decided to write Respondent's board of directors before the directors' August 15, 2003 meeting. That letter was signed by several employees and dated August 8, 2003. Employees Elizabeth Hambourger, Patricia Sanders, Elizabeth Raghunanan Nana, Kimbra Bratton, Tasha Swiney, Billy Sanders, Richard Giroux, Elizabeth Coleman Gray, Leslie Templeton, Bruce Creasey, Eleanor Kinnaird, Katie McDonald, Tracy Wilkinson, Susan Pollitt, Linda Weisel,[35] Kristin Parks,[36] and Laura Smith signed that letter. Employees were solicited to sign the petition by at least two employees. Susan Pollitt asked Richard Giroux to sign the letter. Most of the signatures were obtained by solicitation of Elizabeth Hambourger. The letter was mailed to members of the Board of Directors and copies were left in the in–office mail for several employees including management employees and supervisors.

---

34 The terms extended leave and short–term disability leave are oftentimes used interchangeably.

35 Susan Pollitt signed the petition on behalf of Linda Weisel.

36 Susan Pollitt signed the petition on behalf of Kristin Parks.

Moreover, Linda Weisel, Susan Pollitt and others met with Board Member Barry Nakell and discussed their efforts to include short–term disability benefits for people out on maternity leave.

Then, two attorneys, Linda Weisel and Susan Pollitt, joined in writing Michael Hamden on August 22nd in opposition to Hamden's proposal to require 48–hour workweeks. That letter included the following:

> *On August 19, 2003, you proposed a plan including the following components: effective September 1, 2003, through November 15, 2003, the definition of full time employment will be changed from 30 hours/week to 40 hours/week. All full time employees will be required to work 48 hours a week. Any employee working less than 48 hours a week will no longer be entitled to benefits. These terms of employment may be recommenced on January 15, 2003 (sic), unless certain goals you have identified are met.*
>
> *The stated reasons for this action include that we are 1200 hours behind in our DOC contract, and that attorney caseloads are too large.*
>
> *We think the proposed plan is not called for by the current circumstances and is unfair, particularly to employees who are paid to work between 30 – 32 hours/week. The proposed plan will require a disproportionate increase in hours for this group of employees – all of whom are female – compared to employees now working 40 hours. Thus your proposed plan places a disproportionate burden on female members of the legal staff. Any plan for mandatory additional work should be proportional to the employees' regular work hours, as it has always been in the past.*
>
> *Between us we have worked at NCPLS for 30 years. We have successfully handled major impact litigation as well as individual cases on behalf of North Carolina prisoners throughout our careers here. We have always been, and continue to be, willing to work longer work weeks when required to serve our clients or the organization.*
>
> *The proposed plan is to take effect 8 days after your announced it. Your proposed plan forces a particular group of employees, all women, to choose between working 16 or 18 additional hours a week or lose their benefits, which include health benefits for the employees and their children. For those who have access to alternative health insurance, we have learned that 8 days is not a sufficient amount of time to switch health insurance. This proposed plan also places a disproportionate burden on the working spouses and children of employees who work 30–32 hours/week. We have both worked 30–32 hours/week since 1992, and our family obligations have been structured on this work schedule. We strongly believe that employees who work reduced schedules for reduced pay provide a significant contribution to the program and our clients. This type of employment status is important for employee retention and helps to make this a family–friendly workplace. Bar Associations across the country endorse flexible employment options and NCPLS should continue its tradition of being a family friendly workplace.*
>
> *The justification for the proposed plan does not support this draconian action. Staff have been told we will have until 2005, to make up any contract hours. There are many causes for the current workload situation including: absorbing the caseloads of departing attorneys and attorneys on leave due to childbirth; increased individual caseloads (intake) because those attorneys are not replaced; and increased prison population without an increase in NCPLS*

attorney staff. In the near future, the workloads should be reduced by the upcoming hiring of two attorneys and the return of the attorneys from leave. (GCExh. 10)

Conclusions:

Credibility:

I credit the record showing that field attorneys engaged in protected concerted activities by, among other things: the filing of and discussions regarding Kari Hamel's EEOC charge; the employees' petition, along with discussions, writing and distribution of and about the petition; a joint letter to Michael Hamden from Linda Weisel and Susan Pollitt in opposition to Michael Hamden's 48–hour week proposal; and Weisel and Pollitt and others meeting with Board Member Barry Nakell regarding the employees' efforts to include short–term disability benefits with other maternity leave benefits. As shown herein there was no direct evidence disputing that the employees engaged in the above referenced protected concerted activities. Additionally, the evidence established without dispute that the employees engaged in additional concerted activity regarding (1) the possible inclusion of short–term benefits for employees on maternity leave and (2) in opposition or agreement to various proposals and acts by Michael Hamden and the Board of Directors which are shown herein constituted unfair labor practice threats and acts.

Findings:

The most visible concerted activity by the employees was the August petition to Respondent's board of directors. That petition was signed by employees Elizabeth Hambourger, Patricia Sanders, Elizabeth Raghunanan Nana, Kimbra Bratton, Tasha Swiney, Billy Sanders, Richard Giroux, Elizabeth Coleman Gray, Leslie Templeton, Bruce Creasey, Eleanor Kinnaird, Katie McDonald, Tracy Wilkinson, Susan Pollitt,[37] and Laura Smith. The petition was mailed to members of the Board of Directors and copies were left in the in–office mail for several employees including management employees and supervisors.

In addition to the petition there were numerous employee discussions with other employees regarding the petition and there were meetings involving employees and sometimes, others as well, in which the petition was discussed. Additionally, the evidence shows that several employees engaged in concerted activity included discussions among employees in support of Kari Hamel's claim to Respondent for short–term disability benefits and several employees' discussions about Hamel's EEOC charge.[38]

---

37 As shown herein Pollitt also signed for employees Linda Weisel and Kristin Parks.

38 There would be a question of whether Hamel's EEOC charge constituted protected concerted activity especially where, as here, the evidence showed that Hamel consulted other employees before filing the EEOC charge. However, in view of the total evidence it is apparent that the question of did employees engage in protected concerted activity need not rely on the question of whether the EEOC charge would alone constitute protected concerted activity.

Additionally at least two of the attorneys met with Board Member Barry Nakell to discuss short–term disability for employees on maternity leave.

Then, on August 22, two employees, Weisel and Pollitt, wrote Michael Hamden in opposition to his proposed 48–hour workweeks.

I find that the full record including especially that noted above proved that employees engaged in concerted activities, which fall within the scope of the Act's protection.

Did Respondent take action or actions that were directed against its employees' protected concerted activities?

Was Respondent motivated by its employees' concerted activities?

I shall consider what the record shows, if anything, that may tend to connect Respondent's acts with its employees' concerted activities [***Wright Line***, 251 NLRB 1083 (1980)]. I shall consider whether Respondent was motivated by animus regarding employees' protected concerted activities and whether there was evidence showing a nexus between Respondent's allegedly unlawful activity and any animus.

As shown above Elizabeth Hambourger testified that Michael Hamden called her into his office on August 13, 2003. Hamden said that he had not realized the extent of the factionalism in the office and that things were going to change. He said that he had been too indulgent with the staff. Hamden also told Hambourger that as a result of the employees going to the Board, employees would probably be less likely to achieve what they set out to achieve through the petition and that employees were less likely to get a parental leave policy in place; that he could not now ask the Board to give staff pay raises; that the Board will be angry when it receives the employees' petition; that Respondent will show the staff that they are not entitled to current benefits; and that Respondent will withhold things from the employees. Hamden told Hambourger that senior attorneys should have known better than go to the Board of Directors.

Hambourger testified that Rick Lennon told the Board of Directors on August 15 that management was withholding a planned recommendation for staff pay increases because of employee complaints and ongoing litigation. Hambourger also testified about an August 18 meeting Hamden held with senior attorneys. Hamden spoke and said that in view of a deficit existing in the contract hours owed to the Department of Corrections, factionalism that had plagued the office, an impending move of the office and a planned new computer system; he would announce a proposal the following day which would not be supported by the senior attorneys.

At a staff meeting on August 19, according to Elizabeth Hambourger, Board Member Barry Nakell said the matter of Kari Hamel's complaint had not been resolved and that the Board fully supported Michael Hamden. Michael Hamden told the staff that the Board at its August 15 meeting had rescinded the short–term disability practice. Hamden pointed to four items of concern including a contract hours deficit, factionalism

in the office, a pending office move and a new computer system. Hamden announced a proposal that starting September 1, 2003, all employees would have to work 40 billable hours to qualify for benefits and, additionally, everybody would have to work eight hours overtime each week for a total of 48 hours. That practice would continue from September 1 until November 15, 2003. The staff would then break from that practice for the holidays but if they had not achieved some goals, the 48–hour per week practice would resume on January 16, 2004. Michael Hamden said that was his proposal and he was giving the staff one week for its input. Hamden explained that under his proposal there would no longer be reduced hours with benefits employment.

Kristin Parks talked with Hamden on August 23. Michael Hamden asked Parks if she knew that some members of the staff had gone to the Board behind his back.[39] Hamden said that was not the way to get things done around here. He told Parks, "I'm not going to have that kind of thing anymore." Hamden said that Susan Pollitt and Linda Weisel were causing the problems for him and that they continued to undermine his authority and stir up trouble. Hamden said that he just couldn't put up with it anymore. Parks asked why did Hamden always take things out on Susie and Linda when it was Phil Griffin that was causing problems in the office. Hamden replied that Phil did not matter because no one looks up to him and no one follows him so it doesn't matter what Phil does. The difference is that people respect Linda and Susie and follow them.

At an August 26 staff meeting Hamden said that no one had fully supported his August 19 proposal and he had decided not to require 48 hours work each week. Hamden announced that there would be workload goals that everybody would have to meet. That afternoon Kristin Parks went to Hamden's office and thanked him for discarding the 48–hour week. Hamden said, "Well, you know, I could still do 40 hours a week if that's what I choose to do." Parks replied that he should understand that she could not work 40 hours a week. Parks testified that she had several conversations with Michael Hamden regarding reduced hours workweeks. During one of those conversations Hamden said, "it's not because of the contract hours and it's not because of the money for the benefits, but it's because some people here think it's an entitlement to work part–time".

Kari Hamel went into Hamden office on October 1, 2003. She told him she appreciated the work schedule. Michael Hamden replied that people in the office believed the work schedule was an entitlement and people were not grateful. Hamden went to Susan Pollitt's office that same day. Hamden said that he was going to change the rule so there would no longer be reduced hours employment. Everybody would have to bill 40 hours a week in order to be full–time. Pollitt asked why he was taking that action. Hamden replied there was the matter of deficit in the *Bounds* hours owed under the Department of Corrections contract but it wasn't just that. His action was also due to the hostility that he had received in August in response to his proposal. Hamden said that he could not lead an organization unless everyone was on the same footing. He couldn't take that kind of hostility that he had in August and Hamden said that, "Linda

[39] As shown herein, Linda Weisel, Susan Pollitt and others met with Board Member Barry Nakell.

Weisel and (Pollitt) had threatened gender litigation in (their) letter."[40] Hamden said that Weisel and Pollitt had claimed working reduced hours was an entitlement and he was going to require 40 hours a week. Pollitt testified that Hamden said nothing in that conversation to the effect that requiring 40 hours per week was a temporary measure.

Later on October 1, 2003, Hamden emailed employees that effective January 1, 2004 forty hours would be required to qualify as full–time.

Findings:

Credibility:

It was not disputed but that Respondent withheld consideration of a staff pay increase from August 15, 2003; or that Respondent rescinded its short–term disability benefits practice on August 15; or that Respondent threatened on August 19 to require all employees to work 48–hour weeks; or that Respondent announced on October 1 that it would eliminate reduced–hours work and require a minimum of 40 billable hours each week beginning on January 1, 2004. Evidence was in dispute as to Respondent's motive for taking those actions. Witnesses for Respondent including especially Executive Director Michael Hamden testified to the effect that none of the adverse actions taken after August 8, was motivated by animus against the employees' protected concerted activities.

Michael Hamden[41] testified that he harbored no ill will against employees for their protected concerted activities and that he was not angry because of those acts by the employees. That testimony was in dispute with substantial testimony during General Counsel's case in chief including especially testimony by Kristin Parks, Kari Hamel, Elizabeth Hambourger and Susan Pollitt. Moreover, there was a direct conflict between Hamden's testimony and testimony brought out during rebuttal testimony. For example George Hausen, the executive director of Legal Aid of North Carolina, testified that he was with Michael Hamden in August 2003 at a conference at the McKimmon Center in Raleigh. After Hamden finished a phone conversation, Hamden appeared a little agitated and urgent and he told Hausen that he was having some problems back at the office. Hamden told Hausen that he seemed to have a mutiny on his hands in that there was a petition being passed to overturn a decision he had made about employee Kari Hamel. On cross examination Hausen recalled Hamden saying that he had made a decision about an employee who was out on maternity leave and short term disability and that the other employees were trying to overturn his position with a petition.

Additionally there was other evidence that directly disputed testimony by Hamden. Kristin Parks testified in rebuttal to testimony by Hamden, that Michael Hamden did not contact her prior to issuing his October 1 email, to tell her that he

---

40 See GCExh. 10 and my finding herein that that document evidenced protected concerted activity by Linda Weisel and Susan Pollitt.

41 Hamden was the only competent witness for Respondent regarding motivation in view of the complaint allegations and the record, which showed that only Hamden was alleged to have acted because of animus against protected concerted activity.

intended to make a 40 billable hour rule. In fact, according to Parks, she talked to Hamden on the morning of October 1 before he sent the email announcing that rule and she asked him to tell her first if he ever decided to go to the 40–hour plan so that she could suggest an alternative plan. Hamden agreed that he would do as Parks had requested. Nevertheless, according to Parks, Hamden did not notify her before publishing his October 1 email.

Kari Hamel testified in rebuttal to testimony by Hamden that Hamden did not tell her he was changing to a 40 hours week, before he issued his October 1 email. She also testified that before October 11 Hamden never said that the 40–hour week would be a temporary measure.

I have considered demeanor of the witnesses and the full record and I find that Michael Hamden was not a credible witness. Some of the witnesses impressed me with their credibility including especially Susan Pollitt, Kristin Parks, Kari Hamel and Elizabeth Hambourger.

Conclusions:

After distribution of the employees' petition to the Board of Directors on August 8, 2003, Respondent made a number of changes to its employees working conditions. Michael Hamden frequently introduced those changes after threats to employees. For example, on August 13 Hamden told Elizabeth Hambourger that he had not realized the extent of factionalism in the office and that things were going to change. He threatened that because employees had petitioned the Board the employees were less likely to get pregnancy leave benefits; or receive a pay raise; or to continue to receive current benefits and that the Board will withhold things from the employees. On August 19 Hamden told the staff that the Board had rescinded short–term disability benefits and he threatened to force all employees to work 48 hours each week.

On August 22 Susan Pollitt and Linda Weisel wrote an opposition to Hamden's 48–hour plan. After that Hamden threatened Kristin Parks to the effect that Pollitt and Weisel had gone to the Board behind his back,[42] that Pollitt and Weisel were stirring up trouble and that he was not going to have that anymore. On October 1 Hamden announced the elimination of reduced–hours work.

In view of the above and the full record, I find that Respondent was motivated by its employees' protected concerted activities. I base my findings on credited evidence showing that Hamden threatened employees because of the employees' protected concerted activities and that Hamden made changes in working conditions which he had included in threats because of the employees' protected concerted activities. Hamden's threats and subsequent acts were not subtle. With the exception of his references to "factionalism" in the office, all his threats were unequivocally directed

42 As shown herein Pollitt, Weisel and others had met with Board Member Barry Nakell and discussed extending short–term disability benefits in cases of maternity leave.

against employees' protected concerted activities. Those protected activities were mentioned by Hamden as the employees letter to the Board; employees going to the Board behind his back; employees Weisel and Pollitt were stirring up trouble and undermining his authority; no employees had supported his 48–hour plan; and employees thought reduced–hours was an entitlement. The letter to the Board was the employees' August 8 petition to the Board and that action by the signers of that petition constituted protected concerted activity.

The employees going to the Board behind Hamden's back referred to employees Weisel and Pollitt's visit to Board Member Nakell to discuss Respondent's short–term disability benefits and their hope those benefits would be available to employees on maternity leave. As shown above that was also found to be protected concerted activity. Employees Weisel and Pollitt were stirring up trouble and undermining Hamden in his opinion by, as he expressed to Kristin Parks on August 23, influencing younger employees. At that time Weisel and Pollitt had engaged in extensive protected concerted activity including among other things, participating in the August 8 petition to the Board and their August 22 letter to Hamden. That letter from Weisel and Pollitt to Hamden opposed his 48–hour plan. Then, on October 1 Hamden told Susan Pollitt that he was making changes due in part; to hostility he had received in August in response to his 48–hour proposal. Hamden also told Pollitt that she and Weisel had threatened gender litigation in their August 22 letter.

As to employees feeling entitled to reduced hours. There were only four full time employees on reduced hours. Those four were Linda Weisel, Susan Pollitt, Kristin Parks and Kari Hamil. All four had participated in extensive protected concerted activities extending from Hamil's request for short–term disability benefits, her EEOC charge, the petition supporting Hamil's claim and employees Weisel and Pollitt's visit to Board Member Nakell and Weisel and Pollitt's August 22 letter to Michael Hamden. Therefore, all those threats and subsequent action directly involved protected concerted activity.

As to Hamden's frequent mention of *factionalism* in the office as a cause of his displeasure and action, the record shows that factionalism did arise immediately before Hamden's first alleged illegal threats on August 13. That was the factionalism that appeared in the August 12 staff meeting. The underlying cause of that factionalism was the employees' petition to the Board. As shown above, an angry exchange occurred during that staff meeting between some of the attorneys and others including supervisors Brenda Richardson and Phil Griffin, over the petition supporting Kari Hamel's claim for short–term disability benefits. It was only from that time that Hamden actually moved to correct what he viewed as office factionalism even though, by his own testimony, factionalism was shown to have existed from around 1990. I am convinced that Hamden's reference to factionalism was a thinly veiled reference to the employees' protected concerted activity.

Respondent argued in its brief, among other things, that some nexus must be shown to connect motive of the active decision maker and that the actual decision maker was the Board of Directors. However, the record evidence did not support

Respondent contention that the Board of Directors was the sole decision maker. The record clearly established that the executive director handled day to day running of Respondent without input from the Board of Directors.[43] Moreover, the record proved that the Board routinely considered only those matters placed on meeting agendum by the executive director.[44] For example, the record showed that the decision to eliminate a wage increase from the Board's August 15 agenda was made by Michael Hamden in consultation with Rick Lennon. Neither Hamden nor Lennon was on the Board. Nevertheless, the Board accepted the recommendation to forego consideration of a staff pay increase.

Respondent also argued that General Counsel was attempting to substitute its business reasoning in place of Respondent's. However, that is not the question in my view. The issue herein is whether Respondent was motivated to take the allegedly unfair labor practice action because of its employees protected activities. As shown above I find that Respondent was motivated by its employees' protected activities. In consideration of the issue of whether Respondent would have taken those alleged unlawful actions in the absence of protected activity, I have considered among other things, Respondent's alleged business justification for taking those actions. I made that consideration not from a standpoint of substituting someone else's business judgment for that of Respondent, but from the standpoint of determining among other things, whether Respondent was truthful in its contention that it was motivated by business considerations or instead, whether Respondent used an alleged business motivation as a pretext to cover up illegal motivation.

In that regard Respondent argued that Respondent was simply exercising its business judgment regarding its *Bounds* hours deficit. It argued that its actions after August 8, 2003 were justified by business concerns and that argument was arguably supported by a concern that the DOC could audit Respondent's billable hours at any time. Moreover, Respondent argued DOC would have knowledge of the deficit in billable hours at any time during the existence of the contract because of reports regularly made to DOC by Respondent.

Nevertheless, there was no evidence showing that DOC had authority to take any action because of billable hours deficits before the end of the contact in 2005. Regardless of any knowledge gained from reports from Respondent or from audits it conducted on Respondent's records, DOC could not have penalized Respondent during

---

43 In fact the record illustrated that the normal practice was that the executive director and not the board of directors made decisions. For example, it was Michael Hamden and not the Board that denied Kari Hamel's claim for short–term disability benefits. It was Hamden that announced a proposal to go to a 48–hour workweek. It was Hamden that decided to eliminate reduced hours employment. And it was Hamden that decided to go to a 40 billable hour workweek. Therefore, I find that Hamden was Respondent's decision maker except in those instances where it was shown through credited evidence that the relevant decision was made by the Board.

44 Respondent pointed to testimony of Board of Directors President Gary Presnell and Board members James Crouch, Fred Williams and Barry Nakell to show that the Board did fully consider the pay increase question during the August 15 meeting. I find that testimony conflicts with Respondent's actual record of that meeting. The minutes (GCExh. 5) show, "The current budget includes a 6% staff salary increase, but in light of staff benefit concerns and pending litigation, discussion of staff pay raises was deferred." In light of the minutes, I do not credit the testimony of Presnell, Crouch, Williams and Nakell to the extent their testimony tends to show that the pay raise issue was not deferred but was in fact, discussed at the meeting.

the term of the contract. Moreover, as shown above the record shows that Respondent's billable hours deficit was a pretextual reason for its decision to increase attorney's workloads. Among other things, the billable hours deficit was not a new matter and no event occurred proximate to August 15 or thereafter, to justify severe remedial action other than the employees' protected concerted activity. Also, the hours deficit posed no imminent problem for Respondent. The record proved that DOC could not take any detrimental action against Respondent because of a billable hours deficit before the end of the contract in 2005. Moreover, the record shows that Respondent's actions to allegedly correct its billable hours deficit was discriminatorily applied. The reduced hours attorneys would have been required to work an additional 16 to 18 billable hours each week under Hamden's original proposal of 48–hour weeks as opposed to an additional 8 billable hours each week for all other full time attorneys. Under Hamden's October 1 plan the reduced hours attorneys were required to work an additional 8 to 10 billable hours each week as opposed to the full time attorneys who would not work any additional billable hours.

Respondent also argued that because there were already some attorneys working well in excess of 40 hours in 2003, Hamden wanted the allocation of work to be more equitable. As shown above I do not credit the testimony of Michael Hamden. In addition to what I have shown in my credibility resolutions, I find it incredible that Hamden would suddenly decide to equitably even out the workload. Before August and September 2003 two attorneys had worked reduced hours schedules for over 10 years. Two more, Hamel and Parks, had worked reduced hours for shorter periods but no one including Michael Hamden, testified of concern with equitable division of the work before employees engaged in protected concerted activities in August and September 2003.

Respondent also argued that upon learning of a billable hours deficit DOC could have awarded the contract to a competing law firm. However, there was no record evidence showing the DOC would have been so influenced. Respondent also argued that an unprecedented surge in billable hours in the latter part of the contract might cause DOC to question the validity of such a sudden increase in billable hours. Again, there was no record evidence supporting that assertion.

Respondent argued that General Counsel contended that it could have hired additional attorneys to help reduce its billable hours deficit. I find that neither General Counsel nor Respondent's arguments regarding the possible hiring of additional attorneys is material to the issues herein. If, as Respondent argued, it had a business problem that necessitated reducing a billable hours deficit, it could have taken whatever steps it deemed appropriate to satisfy that objective provided it did not engage in unlawful activity. The entire record has convinced me that Respondent engaged in unlawful activity and Respondent failed to prove it would have taken the same action in the absence of its employees' protected activities. Whether Respondent could have corrected its allegedly business problems by lawful means including possibly, hiring additional attorneys, is neither material in considering General Counsel's case nor in considering Respondent's defense.

As shown herein the evidence was conclusive that Respondent was motivated because of its employees' protected activities and that Respondent would not have taken the alleged unlawful action in the absence of the employees' protected activities.

I shall also consider the record in light of the specific unfair labor practice allegations. The complaint included the following allegations:

> ***Respondent threatened its employees with unspecified reprisals:***
> ***Respondent threatened its employees that it would withhold a wage increase and Respondent actually withheld a wage increase:***
> ***Respondent announced the termination of its extended illness benefit and Respondent actually terminated its extended illness benefit:***
> ***Respondent threatened its employees with a change in required work schedules and Respondent actually changed work schedules for reduced hours employees:***
> ***Respondent constructively discharged Linda Weisel:***
> **Respondent constructively required Susan Pollitt to use personal leave in an attempt to constructively discharge her:**

As to the specific allegations the credited evidence showed as follows:

Respondent threatened its employees with unspecified reprisals?

On August 12 Hamden threatened Elizabeth Hambourger that things were going to change and he had been too indulgent with the staff. Then, on August 22 Hamden threatened Kristin Parks that he was not going to have that kind of thing anymore in reference to employees going to the Board behind his back. He then said that Susan Pollitt and Linda Weisel continued to cause problems for him, undermine his authority and stir up trouble.

Findings:

Credibility:

As shown above I do not credit the testimony of Michael Hamden to the extent it conflicted with credited evidence. I do credit the testimony of Elizabeth Hambourger and Kristin Parks.

Conclusions:

The credited testimony of Hambourger proved that Michael Hamden threatened her that things were going to change because of what he observed in the August 12 meeting. Hamden asked Kristin Parks if she knew that employees had gone behind his back[45] and he threatened Parks that he was not going to have that kind of thing

[45] As shown herein, several people including Susan Pollitt and Linda Weisel, met with Board Member Barry Nakell regarding the employees' efforts to extend short–term disability benefits to employees on maternity leave.

anymore and that Susan Pollitt and Linda Weisel continued to undermine his authority and stir up trouble.

Hambourger was involved in defending the employees' petition during the August 12 meeting. In view of the fact that the petition involved concerted activity, Hambourger's defense of that action also constituted protected concerted activity. Pollitt and Weisel's activity that Hamden complained about also involved in the employees petition to Respondent's board. That too constituted protected concerted activity.

Therefore, I find Hamden's threats of unspecified reprisals against employees because of their protected concerted activities constitutes unfair labor practices in violation of Section 8(a)(1) of the Act.

Respondent threatened its employees that it would withhold a wage increase and Respondent actually withheld a wage increase?

As shown above Elizabeth Hambourger testified that she was asked to come to Michael Hamden's office on August 13, 2003, and, among other things, Hamden threatened her that because of the employees' petition to the Board he could not ask the Board to give the staff a pay raise.

The current contract between Respondent and the DOC was signed on May 16, 2004.[46] Routinely, before August 8, 2003, employees received merit pay increases at the time of a new contract with DOC.[47] The undisputed record showed the practice was for the Executive Director to recommend and the Board of Directors to approve staff pay increases. Before August 8, 2003 Rick Lennon and Michael Hamden planned to recommend a pay increase during the August 15 Board meeting. A day of so before August 15, Michael Hamden decided in consultation with Richard Lennon, to not recommend a staff pay increase to the board of directors during the August 15 meeting. Richard Lennon[48] told the Board Respondent would not recommend staff pay increases during its August 15 meeting. The minutes of that meetings show:

Financial Matters

Budget Report

*Rick Lennon gave a projected budget report * * * * *. The current budget includes a 6% staff salary increase, but in light of staff benefit concerns and pending litigation, discussion of staff pay raises was deferred.* (GC Exh. 6)[49]

---

46 See GCExh. 48. The contract was retroactive to October 1, 2002.

47 Respondent granted pay increases to its staff on May 1, 2001, May 1, 2002 (GCExh. 42) and on May 1, 2004 (GCExh. 51, 52). Negotiations between DOC and Respondent were ongoing on May 1, 2003 and raises were not considered at that time. Instead, as shown herein, Respondent first considered staff pay increases after Respondent and DOC agreed to a contract in May 2003. The first Board meeting after signing of the contract occurred on August 15, 2003.

48 As shown herein Lennon had met with Michael Hamden one or two days before August 15 where Hamden decided with Lennon's agreement, to not recommend the staff pay raise.

49 Elizabeth Hambourger testified that Rick Lennon told the Board of Directors on August 15, 2003 that management was withholding a planned recommendation for staff pay increases because of employee complaints and ongoing litigation.

Findings:

Credibility:

Michael Hamden denied telling Elizabeth Hambourger that he could not ask the Board to give staff raises because of the employees' petition to the Board.[50] As shown throughout my credibility findings, I do not credit the testimony of Michael Hamden to the extent it conflicts with credited evidence. Hamden's overall testimony to the effect that he praised Hambourger for her role in the employees' petition and that he did not blame employees for contacting the Board, was rebutted by credited testimony. Testimony of George Hausen showed that Hamden was agitated after learning of the employees' petition and that he termed the employees' action in that regard a mutiny. Moreover, Respondent's minutes of the August 15 Board meeting show that Hamden directed deferral of the pay raise issue because of "staff benefit concerns" and "pending litigation." That evidence and my observation of her demeanor, supports the testimony of Elizabeth Hambourger and tends to contradict the testimony of Hamden. In view of my observation of demeanor and the credited testimony of Hambourger and events shown in Respondents August 15 minutes regarding this issue, I do not credit the relevant testimony by Michael Hamden.

Conclusions:

During a conversation with Elizabeth Hambourger in his office on August 13, Michael Hamden told Hambourger, among other things, that as a result of the employees petition to the Board he could not ask the Board to give the staff raises. I find that comment constitutes a threat to deny staff pay increases because of the employees' protected concerted activity.

I shall apply the standards set forth in ***Wright Line***, 251 NLRB1083 (1980) in regard to the allegation that Respondent recommended against granting a staff pay increase. I shall first consider whether General Counsel proved that Respondent was motivated to withhold a pay increase because of its animus regarding the employees' protected concerted activities.

I have found herein that Respondent was motivated to retaliate against various employees by refusing to consider a staff pay increase. As shown throughout this record Respondent was not subtle in its acts. It's adverse actions were most often directed against the very activities that employees sought through protected concerted activities or against activities that directly affected those employees that Respondent viewed as most obviously involved in protected activity. Here, unlike many of the matters considered below, Respondent took action against its entire staff. Nevertheless, the record did show that action was taken in retaliation to the employees' petition to the Board. The petition was distributed on August 8, 2003. Michael Hamden testified that it was not until a day or so before the Board's August 15, 2003 meeting that he in agreement with Rick Lennon, decided to recommend against consideration of the pay

50 Hambourger testified that Hamden referred to the petition as "this letter."

increase. There was no showing that anything happened shortly before August 14, which justified Hamden rethinking whether to recommend a pay increase on August 15 other than the employees' petition. Therefore, I am convinced from the credited record that Respondent was motivated to withhold consideration of a 6% pay increase because of the employees' protected concerted activities.

In further adherence to the ***Wright Line*** standard, I shall consider whether Respondent proved that it would have recommend against consideration of a 6% pay increase in the absence of the employees' protected concerted activities. As shown above I find that Respondent's defense to that action was a pretext. Michael Hamden and Rick Lennon claimed that they decided against recommending a pay increase on August 15 because of (1) a deficit in the *Bounds* hours; (2) factionalism in the office; (3) a planned office move; and (4) a planned improved computer program. As shown above, as to (1), the *Bounds* deficit was known well before Michael Hamden decided to not recommend a pay increase and the hours deficit posed no imminent problem for Respondent.[51] As to (2), Hamden admitted that factionalism had existed in the office since 1990. Nothing was shown to have occurred proximate to August 13 or 14, which would have caused imminent alarm over factionalism except for the employees' petition to the Board and the factionalism over that petition during the August 12 staff meeting. The petition and the factionalism demonstrated in that staff meeting stemmed from employees' protected concerted activities. As to (3) and (4), the evidence proved that Respondent including Michael Hamden, was fully aware of those problems from before the time when the last budget was planned and there was no showing of anything proximate to August 15, which would cause Respondent to lawfully change its budgetary plan. Therefore, I find that the evidence failed to show that Respondent would have cancelled a staff pay increase in the absence of its employees' protected activities.

I find that Respondent was motivated to recommend against consideration of a 6% pay increase on August 15, 2003 because of its employees' protected concerted activities and the record failed to show that Respondent would have recommended against consideration of that pay increase in the absence of the employees' protected concerted activities. By that act Respondent engaged in activity in violation of Section 8(a)(1) of the Act.

Respondent threatened and implemented termination of its extended illness benefits?

Among other things Michael Hamden talked about short–term disability benefits after calling Elizabeth Hambourger into his office on August 13. He said it would have been better for the employees to come to him about short–term disability than to have gone to the Board. Hamden said that as a result of the employees having gone to the Board it would probably mean that the employees would be less likely to achieve what

51 As shown herein Respondent would not suffer any penalty for a shortage of Bounds hours, if ever, before the expiration of the contract in the fall 2005.

they had set out to achieve with the petition.

As shown above the Kari Hamil complaint concerned Respondent's refusal to provide her with short–term (or extended illness) benefits during her maternity leave. On July 22, 2003 Hamel filed an EEOC complaint alleging Respondent had illegally denied her benefits under its extended illness policy. On August 8 employees distributed copies of a petition to the Board signed by employees supporting Hamel's claim for extended illness benefits.

The Board of Directors met on August 15, 2003. The minutes of that meeting show:

Executive Session

The board met in Executive Session. The Board directed Michael to advise staff of the repeal of the Extended Illness benefit. Michael was instructed to obtain input from staff regarding desired benefits in light of budgetary constraints for the Board's consideration. (GCExh. 6)

Michael Hamden told the employees that the Board had rescinded the extended illness policy at its August 15 meeting.

Findings:

Credibility:

As shown throughout this decision, I do not credit the testimony of Michael Hamden to the extent it conflicts with credited evidence. The evidence proved that Respondent acted to repeal the short–term disability benefits immediately upon receiving the employees' petition. Hamden's testimony that Respondent did not retaliate against its employees is not credited and I find the evidence shows that Respondent's repeal of the short–term disability benefit was motivated by the employees' protected concerted activity.

Conclusions:

During his conversation with Elizabeth Hambourger in his office on August 13, Michael Hamden told Hambourger, among other things, it would have been better for the employees to have come to him about short–term disability benefits than to have gone to the Board. I find that comment constitutes a threat to deny improved short–term disability benefits because of the employees' protected concerted activity.

I shall apply the standards set forth in ***Wright Line***, 251 NLRB 1083 (1980) in determining whether Respondent unlawfully eliminated its short–term disability benefits. In that regard I shall first consider whether General Counsel proved that Respondent was motivated to eliminate short–term disability benefits because of its animus regarding the employees' protected concerted activities.

I have found herein that Respondent was motivated to retaliate against various employees by eliminating its short–term or extended illness benefits. As shown throughout this record Respondent failed to exercise subtlety in its actions. It's adverse actions were most often directed against the very activities that employees sought through protected concerted activities or against activities that directly affected those employees that Respondent viewed as most obviously involved in protected activity. Here, the entire thrust of the protected concerted activities was to extend Respondent's short–term disability policy and that was the precise policy that Respondent eliminated. On August 15 Respondent's board of directors voted to entirely rescind the employees' short–term disability benefits.

The evidence showed that Michael Hamden expressed hostility especially in regard to the protected activities and employee leadership in those activities. By eliminating its short–term disability policy Respondent illustrated what it could do in the event of a "mutiny." The record shows that Respondent announced only that the Board at its August 15 meeting had rescinded the policy. In view of the full record including especially Respondent's threat that the employees should have approached Michael Hamden rather than the Board about short–term disability benefits; the timing of Respondent's action; and its previous showing of animus, I find that the record proved that Respondent rescinded its short–term disability policy because of its employees' protected activities.

I shall consider whether Respondent proved that it would have rescinded the short–term disability benefits in the absence of the employees' protected concerted activities. Respondent argued that the short–term disability policy was eliminated because their attorney had advised that the policy may be in violation of appropriate sex discrimination laws and because that is what the employees requested in their petition to the Board. Actually, the issue in the petition was not whether Respondent's policy was illegal but whether Respondent's practice of not applying that policy to cases of maternity leave was illegal. That was the thrust of both the attorney's advice to the Board and the request contained in the employees' petition. The petition did include a request for coverage under an independent insurance policy but there was no request that the policy be rescinded pending conversation to a private insurance policy. I find the record failed to prove that Respondent would have rescinded its short–term disability policy in the absence of its employees' protected activities.

Respondent threatened its employees with a change and actually changed its required work schedules for reduced hours employees?

Elizabeth Hambourger was identified as the draftsperson of the employees' petition during the August 12 staff meeting. Afterward Michael Hamden told Hambourger that senior attorneys should have known better than submit the petition. He referred to those senior attorneys that were on the staff at a time when Hamden was a staff attorney. The record showed the senior attorneys that had been on the staff since the time when Hamden was a staff attorney, were limited to Linda Weisel and Susan Pollitt.

During the August 19 staff meeting, according to Hambourger, Michael Hamden told the staff, among other things, that because of a contract hours deficit, factionalism in the office, the pending office move and the new computer system, he was proposing that beginning on September 1, 2003 all employees would have to work 40 billable hours to qualify for benefits and, additionally, everybody would have to work eight hours overtime each week for a total of 48 hours. That practice would continue from September 1 until November 15, 2003. The staff would then break from that practice for the holidays but if they had not achieved some goals, the 48–hour per week practice would resume on January 16, 2004. Michael Hamden said he was giving the staff one week for its input. Hamden explained that under his proposal there would no longer be reduced hour with benefits employment.

Kristin Parks[52] met with Michael Hamden on August 23. Hamden asked Parks if she knew that some members of the staff had gone to the Board behind his back. Hamden said that was not the way to get things done around here. He told Parks, "I'm not going to have that kind of thing anymore." Parks told Hamden that she wanted to talk about the 48–hour a week issue and how badly it would impact on people with families. Hamden said that Susan Pollitt and Linda Weisel were causing the problems for him and that they continued to undermine his authority and stir up trouble. Hamden said that he just couldn't put up with it anymore. Parks asked why did Hamden always took things out on Susie and Linda when it was Phil Griffin that was causing problems in the office. Hamden replied that Phil did not matter because no one looks up to him and no one follows him so it doesn't matter what Phil does. The difference is that people respect Linda and Susie and follow them.

At the August 26 staff meeting Hamden said that no one had fully supported his August 23 proposal and he had decided not to require 48 hours work each week. Hamden announced that there would be workload goals that everybody would have to meet. That afternoon Kristin Parks went to Hamden's office and thanked him for discarding the 48–hour week. Hamden said, "Well, you know, I could still do 40 hours a week if that's what I choose to do." Parks replied that he should understand that she could not work 40 hours a week. Parks testified that she had several conversations with Michael Hamden regarding reduced hours workweeks. During one of those conversations Hamden said, "it's not because of the contract hours and it's not because of the money for the benefits, but it's because some people here think it's an entitlement to work part–time".

On October 1 Michael Hamden told Kari Hamel that people in the office believed the work schedule was an entitlement and people were not grateful. Hamden also talked with Susan Pollitt that same day. He said that he was going to change the rule so there would no longer be reduced hours employment. Everybody would have to bill 40 hours a week in order to be full–time. Pollitt asked why he was taking that action. Hamden replied there was the matter of deficit in the *Bounds* hours owed under the Department of Corrections contract but it wasn't just that. His action was also due to the

52 At that time Parks was off on maternity leave.

hostility that he had received in August in response to his proposal. Hamden said that he could not lead an organization unless everyone was on the same footing. He couldn't take that kind of hostility that he had in August and Hamden said that, "Linda Weisel and (Pollitt) had threatened gender litigation in (their) letter." Hamden said that Weisel and Pollitt had claimed working reduced hours was an entitlement and he was going to require 40 hours a week. Later that day, October 1, 2003, Hamden emailed the employees that effective January 1, 2004 forty hours would be required to qualify as full–time. The October 1 email included the following:

> *So everyone will have enough notice (three months) to make the necessary arrangements, I want to let your know that beginning on January 1st, full–time employment with NCPLS will require a 40–hour work week. This change will affect Support staff, intake staff, and all people who are presently considered full–time employees who are working fewer than 40 hours per week. Of course, salaries and other compensation will be adjusted upward to reflect the increase time–commitment.*

Findings:

Credibility:

As shown herein I do not credit Hamden and I do credit Hambourger, Parks and Hamel.

Conclusions:

On August 18, 2003 Michael Hamden threatened the staff with a proposal to be announced the following day, that senior attorneys would not like. On August 19 Hamden proposed that all attorneys would have to work 40 hours plus 8 hours overtime each week to receive benefits. After employees protested against the proposed 48 hours week [including Linda Weisel and Susan Pollitt's join letter (GCExh. 10)], Hamden announced that he had decided not to impose 48–hour workweeks. However, on August 26, 2003 Hamden threatened employee Kristin Parks that he could still do a 40–hour work week. At one time Hamden told Parks that he could eliminate reduced hours work because there are some employees that "think it is an entitlement to work (reduced hours)." I find those comments constitute a threat to eliminate reduced hours work because of their protected concerted activity.

In regard to the allegation that Respondent unlawfully eliminated its reduced hours practice, I shall first consider whether General Counsel proved that Respondent was motivated to require 40 billable hours each week because of its animus regarding the employees' protected concerted activities [***Wright Line***, 251 NLRB 1083 (1980)]. As shown above, I have found herein that Respondent was motivated to retaliate against various employees by changing their working conditions. Those changes included the elimination of the reduced–hours schedule because of the employees' protected activities.

The evidence showed that Michael Hamden expressed hostility specifically in regard to the protected activities and employee leadership in those activities. Moreover,

a reduced hours employee, attorney Kari Hamel, initiated the concerted activity, which led to Hamden and Respondent's hostility. Kristin Parks, another reduced hours attorney was in the same position as Hamel as regards short–term disability benefits during maternity leave. By eliminating reduced–hours Respondent struck directly at those two employees as well as at the two remaining reduced hours employees. Those two, Linda Weisel and Susan Pollitt, were credited by Hamden with being the leaders in the August 2003 efforts to undermine his authority. By eliminating reduced–hours Michael Hamden moved directly against the four attorneys[53] that would most directly benefit if the employees' protected concerted activities had been successful.

In further consideration of the ***Wright Line*** standard, I shall consider whether Respondent proved that it would have eliminated the reduced hours week schedule in the absence of the employees' protected concerted activities. As shown above I find that Respondent's defense to that action was a pretext. Respondent claimed that it eliminated reduced hours schedules because of (1) a deficit in the *Bounds* hours; (2) factionalism in the office; (3) a planned office move; and (4) a planned improved computer program. As shown herein, as to (1) the *Bounds* deficit was known well before Michael Hamden decided to eliminate reduced–hours and the deficit posed no imminent problem for Respondent. As to (2) Hamden admitted that factionalism in the office had existed since 1990. However, it was immediately after the August 12 staff meeting that Hamden, in consultation with Rick Lennon, decided to start actions including delaying a pay increase, that were in retaliation of the employees' petition and associated activity. Before that time there was no showing that Respondent was concerned with factionalism and there was not showing of any other event proximate to October 1 which caused Respondent to show increased concern with factionalism. As to (3) and (4) the evidence proved that Respondent including Michael Hamden, was fully aware of those problems from before the time when the last budget was planned and there was no showing of anything proximate to October 1, which would cause Respondent to change its budgetary plan. Therefore, I find that the evidence failed to show that Respondent would have eliminated the reduced–hours schedule in the absence of its employees' protected activities.

Respondent also argued that even if believed, statements by Hamden allegedly made to Kristin Parks and Susan Pollitt to the effect that some attorneys believed reduced hours was an entitlement or that some were not grateful for reduced hours schedules, shows that it was not the employees' petition that motivated action by Hamden. However, as shown above, it was those same reduced hours attorneys that Hamden associated most directly with the petition and other protected concerted activity. As shown above, Hamden stated that it was the senior attorneys and that it was Pollitt and Weisel that were causing trouble. Pollitt and Weisel were shown to be the "senior attorneys," that had been on the staff from the time when Michael Hamden was also a staff attorney. The two remaining reduced hours attorneys were Kari Hamel and Kristin Parks and those two were the only attorneys directly involved the 2003 maternity

53 Attorney Eleanor Kinnaird also worked reduced hours. However, Kinnaird regularly worked less than 30 hours each week and was not entitled to receive benefits. She was considered a part–time employee.

leave issue. Both Hamel and Parks gave birth in 2003 and Hamel was the attorney that specifically requested short–term benefits during her maternity leave. It was against that background that Hamden started talking about attorneys or employees believing that reduced hours was an entitlement. I find a strong connection between the two and I am convinced that Hamden's reference to "entitlement" would not have come up but for the protected concerted activities. I find that Respondent engaged in unfair labor practices by threatening to and actually eliminating the reduced–hours practice and Respondent failed to prove it would have eliminated reduced–hours in the absence of the employees' protected concerted activity.

Respondent constructively discharged Linda Weisel?

Linda Weisel worked as for Respondent as a staff attorney. She worked from 1986 until the end of January 2004. Weisel was one of Respondent's reduced hours employees. From 1992 she regularly worked 30 billable hours a week. On that reduced hours schedule her pay and benefits with the exception of health insurance, were proportionally reduced. She was considered a full–time employee and, as such, received full health insurance benefits.

Weisel learned of the dispute between Kari Hamel and Respondent over short–term disability leave in late March or early April 2003. Around that time she talked to Jimmy Carter about that dispute. Weisel told Carter that she thought law on the subject supported Hamel's position. From that time until her employment ended Weisel supported Kari Hamel's claim for short–term benefits. Among other things, she talked with other employees about Hamil's claim and she gave her proxy to Susan Pollitt to sign the employees' petition supporting Hamil (GCExh. 5) while she was absent on vacation. She along with Susan Pollitt wrote Michael Hamden on August 22, 2003 in opposition to Hamden's 48–hour a week proposal.

Findings:

Credibility:

As shown herein I do not credit the testimony of Michael Hamden to the extent it conflicts with credited evidence. I credit the undisputed evidence showing that Linda Weisel was extensively involved in the employees' protected concerted activities in the summer and fall 2003 and that Michael Hamden identified Weisel and Susan Pollitt as the two senior attorneys that were undermining his position and causing trouble. I also credit the evidence some of which was admitted by Michael Hamden that Billy Sanders, Phil Griffin and Kristin Parks cautioned him in the summer and fall 2003 that reduced hours employees would quit if Hamden forced them to work 40 billable hours weeks.

Conclusions:

The Board has applied a two–part test in cases involving constructive discharge allegations:

"There are two elements which must be proved to establish a 'constructive

> *discharge.' First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's (protected concerted) activities."* ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976).**

In this instance in order to fully consider "the burdens imposed upon the employee must cause," one need not rest on projections as to what may happen following Respondent's allegedly unlawful action. Here, the changes occurred well before the hearing in this matter. As shown above Respondent announced elimination of reduced hours with benefits on October 1, 2003. At that time there was one part–time employee working less than 30 hours a week. That was Eleanor Kinnaird. There were four reduced–hours with benefits attorneys. Those four were Linda Weisel, Susan Pollitt, Kristin Parks and Kari Hamel. None of those five attorneys continued working under the terms announced on October 1. Four, Eleanor Kinnaird, Linda Weisel, Kristin Parks and Kari Hamel, resigned and all four testified they resigned because of Respondent's elimination of reduced–hours schedules. One of those four, Eleanor Kinnaird resigned out of protest over Respondent's action.[54] The remaining three resigned because of the burdens imposed by elimination of reduced–hours schedules. The sole remaining reduced–hours attorney was Susan Pollitt. Pollitt was also unable to work 40 billable hours a week and she continued to work a reduced hours schedule. As shown below, Pollitt was able to continue her employment with Respondent by use of her personal leave time to make up the difference each week after January 1, 2004, in the number of hours she was able to work and 40 billable hours.

As shown above Respondent took actions against its employees because its employees signed the August 8 petition supporting Hamil. All those adverse actions affected Linda Weisel. Those actions included Respondent withholding a wage increase for all employees from August 15 and Respondent eliminating its short–term benefits practice. The most dramatic change in working conditions in regard to its affect on Weisel appeared to be Respondent's elimination of reduced–hours work.

Weisel along with Pollitt also engaged in protected concerted activity by writing Hamden that they opposed his proposal to require 48–hour workweeks. As shown herein Respondent took detrimental action against Weisel after her specific protected concerted activity on August 8 and 22, 2003.

The record showed that Respondent was aware that its October 1 announcement of the elimination of reduced–hours employment was likely to result in the resignation of reduced–hours employees. As shown herein, from August 19 the employees including Kristin Parks, repeatedly told Hamden they would not be able to continue working if required to work 40 billable hours each week. Billy Sanders, who was called by Respondent, admittedly told Hamden during the week before October 1 that elimination of reduced–hours may cause all four reduced–hours attorneys to resign.

---

54 Kinnaird did not receive benefits because she regularly worked less than 30 hours each week. Therefore, she was not directly affected by elimination of reduced hours with benefits.

Another of Respondent's witnesses, Team Leader Phil Griffin testified that elimination of reduced–hours would cause Eleanor Kinnaird to quit.[55] Michael Hamden was vague but he appeared to testify that only Kristin Parks told him that she would resign if forced to work a 40 hours a week schedule. He testified that he did not believe Linda Weisel would resign. As to Billy Sanders, Hamden admitted that he did have discussions with Sanders and that he (Hamden) "certainly considered the possibility that we might lose some members of the staff."

Respondent argued there is no evidence showing that Michael Hamden intended his change to a minimum 40 billable hours per week schedule to cause Linda Weisel to resign. As shown above I do not credit Michael Hamden's testimony. I specifically discredit his testimony that he did not intend for any of the reduced hours attorneys including Weisel, Hamel and Parks, to resign. As shown herein the credited record showed that Hamden believed Weisel and Pollitt to be troublemakers that undermined his authority. He believed Weisel and Pollitt had led the concerted action in petitioning the Board of Directors. Moreover, management officials including Billy Sanders told Hamden he believed the 40 minimum hours requirement might cause reduced–hours attorneys to resign. I find that Hamden specifically intended to force reduced–hours attorneys to resign. ***American Licorice Co***., 299 NLRB 145, 148 (1990).

Respondent also argued the evidence failed to show that Respondent should have reasonably foreseen that reduced–hours attorneys would resign. However, the record illustrated that Michael Hamden was repeatedly told that reduced hours attorneys would resign if he eliminated the reduced hours privilege. As shown above Billy Sanders told Hamden the reduced hours attorneys may resign. Kristin Parks, Susan Pollitt and Linda Weisel told Hamden on several occasions that they could not work 40 billable hours each week.

Respondent argued that neither Weisel nor Susan Pollitt had home responsibilities great enough to justify a constructive discharge determination. However, as was the case in determining whether certain action was justified business judgments by Respondent, I shall not substitute my judgment for the judgments of the alleged discriminatees in determining the extent of their family obligations. The record clearly established that both Weisel and Pollitt are the primary caregivers of their respective child or children and the record established each has substantial responsibilities which justified the desire to only work reduced hours. Moreover, even though Michael Hamden was aware that all the reduced–hours attorneys as well as some of the other reduced hours employees, desired to work reduced hours at reduced salaries, he was content to accept their respective judgment behind those desires without inquiring further as to the merits of their needs. I find that both Weisel and Pollitt showed through credited and uncontested testimony that their reduced hours work were personal necessities. Moreover, Hamden was fully aware that loss of reduced hours privileges might cause some or all the reduced hour attorneys to resign. I find that Hamden

[55] Although Kinnaird was not a full–time employee because she routinely worked less than 30 billable hours each week, the testimony shows that supervision anticipated that elimination of the reduced–hours practice would cause her to resign.

reasonably foresaw that his action would result in resignation by reduced–hours attorneys.

The evidence showed that Michael Hamden expressed hostility especially in regard to the protected activities and leadership in those activities by Weisel and Pollitt. Moreover, another reduced hours employee, attorney Kari Hamel, initiated the activity which led to Hamden's hostility. Kristin Parks, the sole remaining reduced hours attorney was in the same position as Hamel as regards her right to short–term disability benefits during maternity leave.

All the above factors and the full record proved that Respondent was motivated to require Weisel to work a full 40 billable hour week because of its employees' protected concerted activities.

I shall also apply the standards set forth in ***Wright Line***, 251 NLRB 1083 (1980). Of course, the initial *Wright Line* consideration is similar to the question considered above under *Crystal Princeton*. In that regard, as shown above, I find that Respondent was motivated to change the working conditions of its employees including especially Linda Weisel because of its animus regarding the employees' protected concerted activities.

The evidence included unrebutted testimony from Linda Weisel showing that she is the primary caregiver[56] for her child and demands resulting from her time with her family and her time involved in family duties,[57] proved that Respondent's elimination of reduced–hours work resulted in a change in Weisel's "working conditions so difficult or unpleasant as to force (her) to resign." Moreover, the credited testimony of Weisel proved that she told Michael Hamden "(M)y family obligations will not allow me to (work 40 hours a week)."

In further consideration of the ***Wright Line*** standard, I shall also consider whether Respondent proved that it would have eliminated the reduced hours week schedule for Linda Weisel in the absence of the employees' protected concerted activities. As shown above I find that Respondent's defense to that action was a pretext. Respondent claimed that it eliminated reduced–hours schedules because of (1) a deficit in the *Bounds* hours; (2) factionalism in the office; (3) a planned office move; and (4) a planned improved computer program. As shown above, as to (1), the *Bounds* deficit was known well before Michael Hamden decided to eliminate reduced–hours and the deficit posed no imminent problem for Respondent. As to (2), Hamden admitted that factionalism in the office had existed since 1990. There was nothing to show that action was required to eliminate factionalism on October 1, 2003 other than factionalism caused by the employees' protected concerted activity. As to (3) and (4), the evidence proved that Respondent including Michael Hamden, was fully aware of those problems

56 Weisel's husband is an attorney that works approximately 60 hours a week.

57 Weisel's son is now 12 years old. Linda Weisel testified to the effect that she has always been responsible for picking up her son after school and escorting him to school, sports practices, music lessons, camps, medical appointments, religious studies and school events. She assists her son in his work on school assignments including homework.

from before the time when the last budget was planned and there was no showing of anything proximate to October 1, which would cause Respondent to change its budgetary plan. Therefore, I find that the evidence failed to show that Respondent would have eliminated the reduced–hours schedule in the absence of its employees' protected activities.

Despite Respondent's claim that reduced–hours was a privilege and not a right as well as its argument that Weisel did not have child care responsibilities sufficiently grave in magnitude to justify a constructive discharge finding, the record showed that shortly after Respondent expressed its animus toward it's employees' protected activities, it eliminated a long standing working condition because of its animus against it's employees' protected activities. Regardless of whether reduced hours was a privilege or a right, Respondent could not lawfully eliminate that privilege or right because of its animus against protected concerted activities. Moreover, there is no authority for the argument that discriminatees must illustrate a certain level of need to justify a constructive discharge allegation. The General Counsel did illustrate that Weisel had serious child–care responsibilities and that she met those responsibilities through among other things, use of time she would not have had but for her reduced–hours schedule. Moreover, General Counsel proved that Weisel took her responsibilities seriously and that Respondent was fully aware that Weisel took her family responsibilities seriously.

In summary, I find that General Counsel proved that Respondent's changed working conditions for its reduced hours attorneys as found herein, including especially its elimination of reduced hours work, because of the employees protected concerted activities. Those changes resulted in burdens on the employees so difficult and unpleasant that they did cause reduced–hours attorneys to either resign or use personal leave time to avoid resigning. The record evidence proved that Respondent intended to cause its reduced–hours attorneys to resign. ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976).** Respondent imposed those changes in working conditions because of Weisel's and other employees' protected concerted activities. ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976); *Wright Line***, 251 NLRB 1083 (1980). I find that Respondent constructively discharged Linda Weisel in violation of Section 8(a)(1) of the Act. ***American Licorice Company,*** 299 NLRB 145 (1990); ***Bennett Packing Company of Kentucky, Inc.,*** 285 NLRB 602 (1987). The evidence did not prove that Respondent would have constructively discharged Weisel in the absence of the protected concerted activity.

Respondent constructively required Susan Pollitt to use personal leave in an attempt to constructively discharge her?

Susan Pollitt, like Linda Weisel, worked for Respondent as a staff attorney on a reduced–hours schedule. Pollitt started working for Respondent as an attorney in June 1989. From 1992 until 2004 she worked reduced hours of 32 billable hours per week. Like Weisel and the other reduced hours attorneys, Pollitt received reduced pay and benefits with the exception of health insurance, in proportion 32 hours versus full pay and benefits at 40 billable hours a week. She and all the reduced hours attorneys were

entitled to full health insurance benefits.

As shown above Pollitt was extensively involved in the protected concerted activities in support of Kari Hamel's claim for short–term benefits during maternity leave. Respondent was aware of Pollitt's activities and Michael Hamden told Kristin Parks and Pollitt, that Pollitt, as well as Linda Weisel, undermined his leadership role and posed a danger to him. Pollitt, like Weisel, also engaged concerted activity by jointly writing Hamden on August 22 in opposition to his 48–hour week proposal.

Susan Pollitt did not resign after Respondent announced elimination of reduced–hours schedules. Instead Pollitt has used and she continues to use, a built up reserve of accrued leave to continue working reduced hours each week. Thereby Pollitt has been able to meet her family obligations to the same extent as before elimination of reduced hours work.

Findings:

Credibility:

As shown herein I do not credit the testimony of Michael Hamden to the extent it conflicts with credited evidence. I credit the undisputed evidence showing that Susan Pollitt was one of the employees that was extensively involved in the employees' protected concerted activities in the summer and fall 2003 and that Michael Hamden identified Pollitt as well as Linda Weisel, as the senior attorneys that were undermining his position and causing trouble.

Conclusions:

As shown above, the Board has applied a two–part test in cases involving constructive discharge allegations:

> *"There are two elements which must be proved to establish a 'constructive discharge.' First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's (protected concerted) activities."* ***Crystal Princeton Refining Co*****., 222 NLRB 1068, 1069 (1976).**

In this instance as in the case with Linda Weisel, in order to fully consider "the burdens imposed upon the employee must cause," one need not rest on projections as to what may happen following Respondent's allegedly unlawful action. Here, the unlawful changes occurred well before the hearing in this matter. As shown above Respondent started its unfair labor practices on August 15 and it subsequently announced elimination of reduced–hours on October 1, 2003. Since then all the attorneys that worked less than 40 billable hours a week including part–time employee Eleanor Kinnaird, and full–time but reduced–hours attorneys Weisel, Parks and Hamel, have resigned. The sole remaining reduced–hours attorney is Susan Pollitt. Pollitt was also unable to work 40 billable hours a week and she continued to work a reduced

hours schedule. As shown below, Pollitt was able to continue her employment with Respondent by use of her personal leave time to make up the difference each week after January 1, 2004, in the number of hours she was able to work and 40 billable hours.

As shown above Respondent took actions against its employees because its employees engaged in protected concerted activity including signing the August 8 petition supporting Kari Hamil. All those adverse actions affected Susan Pollitt. Those actions included Respondent withholding a wage increase and eliminating its short–term benefits practice for all employees from August 15. Pollitt and Weisel engaged in another protected concerted activity on August 22 when they wrote Hamden that they opposed his 48–hour week proposal. Subsequently, Respondent engaged in further unfair labor practices by, among other things, eliminating reduced–hours workweeks. That elimination of reduced hours appears to be the most dramatic change in working conditions in regard to its affect on Pollitt.

The record showed that Respondent was aware that its October 1 announcement of the elimination of reduced–hours employment was likely to result in the resignation of reduced–hours employees. As shown herein, from August 19 the employees including Kristin Parks, repeatedly told Hamden they would not be able to continue working if required to work 40 billable hours each week. Billy Sanders, who was called by Respondent, admittedly told Hamden during the week before October 1 that elimination of reduced–hours may cause all four reduced–hours attorneys to resign. Another of Respondent's witnesses, Team Leader Phil Griffin testified that elimination of reduced–hours would cause Eleanor Kinnaird to quit.[58] Michael Hamden appeared to testify that only Kristin Parks told him that she would resign if forced to work a 40 hours a week schedule. He testified that he did not believe Linda Weisel would resign. As to Billy Sanders, Hamden admitted that he did have discussions with Sanders and that he (Hamden) "certainly considered the possibility that we might lose some members of the staff."

The evidence showed that Michael Hamden expressed hostility specifically in regard to the protected activities, and leadership in those activities, by Weisel and Pollitt. Moreover, another reduced hours employee, attorney Kari Hamel, initiated the protected concerted activity, which led to Hamden's animus. Kristin Parks, the sole remaining reduced hours attorney was in the same position as Hamel as regards her right to short–term disability benefits during maternity leave.

All the above factors and the full record proved that Respondent was motivated to require Pollitt to work a full 40 billable hour week because of its employees' protected concerted activities [***Wright Line***, 251 NLRB 1083 (1980)]. The record proved that Respondent intended by its unlawful action to cause Pollitt to resign and especially by eliminating reduced–hours work. Respondent engaged in those unfair labor practices

58 Although Kinnaird was not a full–time employee because she routinely worked less than 30 billable hours each week, the testimony shows that supervision anticipated that elimination of the reduced–hours practice would cause her to resign.

because of its employees' protected concerted activities. ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976)**

I shall also consider under ***Wright Line*** whether Respondent proved that it would have intentionally forced Pollitt to use personal leave to avoid constructive discharge in the absence of the employees' protected concerted activities. As shown above I find that Respondent's defense to that action was a pretext. Respondent claimed that it eliminated reduced–hours schedules because of (1) a deficit in the *Bounds* hours; (2) factionalism in the office; (3) a planned office move; and (4) a planned improved computer program. As shown above, as to (1) the *Bounds* deficit was known well before Michael Hamden decided to eliminate reduced–hours and the deficit posed no imminent problem for Respondent. As to (2) Hamden admitted that factionalism in the office had existed since 1990. Therefore, there was nothing to show that action was required to eliminate factionalism on October 1, 2003. As to (3) and (4) the evidence proved that Respondent including Michael Hamden, was fully aware of those problems from before the time when the last budget was planned and there was no showing of anything proximate to October 1, which would cause Respondent to change its budgetary plan. Therefore, I find that the evidence failed to show that Respondent would have eliminated the reduced–hours schedule in the absence of its employees' protected activities.

Susan Pollitt credibly testified that she is the primary caregiver[59] for her children. Under the circumstances in her case I find that Respondent's elimination of reduced–hours work resulted in a change in Pollitt's "working conditions so difficult or unpleasant as to force (her) to resign." Of course, Pollitt had not resigned at the time of the hearing. However, she continued to work only by use of her personal leave to make up the difference between what she was able to work and what she would have worked to fulfill Respondent's requirement that all full–time employees work 40 billable hours each week.

Despite Respondent's claim that reduced–hours was a privilege and not a right as well as its argument that Pollitt did not have child care responsibilities sufficiently grave in magnitude to justify a constructive discharge finding, the credited evidence proved that Respondent eliminated reduced–hours because of its animus against its employees' protected concerted activities. Regardless of whether reduced hours was a privilege or a right, Respondent could not lawfully eliminate that privilege or right because of its animus against protected concerted activities. General Counsel proved that Pollitt had serious child–care responsibilities and that she met those responsibilities through among other things, use of time she would not have had but for her reduced–hours schedule. In Pollitt's case she was forced to use accumulated personal leave time in order to continue working a reduced–hours schedule. General Counsel proved that Pollitt took her responsibilities seriously and that Respondent was fully aware that Weisel took her family responsibilities seriously.

---

59 Weisel's husband is an attorney that works approximately 60 hours a week.

As to the second element in the ***Crystal Princeton*** standard, both employees and supervision repeatedly told Michael Hamden that elimination of reduced–hours would probably result in reduced–hours attorneys' resignations. Moreover, as shown above, credited evidence proved that Michael Hamden was motivated by animus against the employees' protected concerted activities and it was shown that Hamden knew of Pollitt's involvement in those activities and that Hamden blamed Pollitt and Weisel with leading other employees in those activities.

General Counsel proved that Respondent's unlawfully changed working conditions, including especially its elimination of reduced hours work, because of the employees' protected concerted activities. Those changes resulted in burdens on the employees so difficult and unpleasant that they did cause reduced–hours attorneys to either resign or use personal leave time to avoid resigning. The record evidence proved that Respondent intended to cause its reduced–hours attorneys to resign. ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976).** Respondent imposed those changes in working conditions because of Pollitt's and other employees' protected concerted activities. ***Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976); *Wright Line***, 251 NLRB 1083 (1980). I find that Respondent intended to constructively discharged Susan Pollitt and by its actions in that regard including especially its unlawful elimination of reduced hours privileges, forced Pollitt to use her personal leave to avoid resigning, in violation of Section 8(a)(1) of the Act. ***American Licorice Company,*** 299 NLRB 145 (1990); ***Bennett Packing Company of Kentucky, Inc.,*** 285 NLRB 602 (1987).

Respondent also argued the evidence failed to show that Respondent should have reasonably foreseen that reduced–hours attorneys would resign. However, the record illustrated that Michael Hamden was repeatedly told that reduced hours attorneys would resign if he eliminated the reduced hours privilege. As shown above Billy Sanders told Hamden the reduced hours attorneys may resign. Kristin Parks, Susan Pollitt and Linda Weisel told Hamden on several occasions that they could not work 40 billable hours each week. Respondent argued that neither Weisel nor Pollitt had home responsibilities great enough to justify a constructive discharge determination. However, as was the case in determining whether certain action was justified business judgments by Respondent, I shall not substitute my judgment for the judgments of the alleged discriminatees in determining the extent of their family obligations. The record clearly established that both Weisel and Pollitt are the primary caregivers of their families and the record established each has substantial responsibilities, which justified their desire to only work reduced hours. Moreover, even though Michael Hamden was aware that all the reduced–hours attorneys as well as some of the other reduced hours employees, desired to work reduced hours at reduced salaries, he was content to accept their respective judgment without inquiring further as to the merits of their needs. I find that both Weisel and Pollitt showed through credited and uncontested testimony that reduced hours work were personal necessities. Moreover, Hamden was fully aware that loss of reduced hours privileges might cause some or all the reduced hour attorneys to resign.

Conclusions of Law

1. By threatening its employees with unspecified reprisals; by threatening its employees that it would withhold a wage increase; by announcing the termination of its extended illness benefit; and by threatening its employees with the elimination of reduced–hours work schedules; the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

2. By withholding a 6% wage increase for its employees on August 15, 2003; by terminating its extended illness (i.e., short–term) benefit for its employees on October 1, 2003; by eliminating the practice of employees' working reduced hours each week on January 1, 2004; by its constructive discharge of Linda Weisel and by forcing Susan Pollitt to use personal leave to avoid constructive discharge; because of employees' protected concerted activity, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully withheld a 6% staff pay increase on August 15, 2003; having terminated its extended illness benefits on October 1, 2003; having eliminated the practice of employees' working reduced hours on January 1, 2004; having constructively discharged Linda Weisel; and having constructively required Susan Pollitt to use personal leave time, it must immediately reinstate its extended illness benefits as those benefits existed before October 1; it must immediately reinstate its reduced hours practice as that practice existed before October 1; and it must offer Weisel and Pollitt immediate reinstatement to their former reduced–hours jobs. Additionally Respondent must immediately make whole members of its staff that were employed at any time on and after August 15, 2003 for earnings lost because of Respondent's unlawful denial of the 6% staff pay increase; Respondent must make whole all employees injured by its elimination of its extended illness policy on October 1, 2003; Respondent must make whole all employees injured by its elimination of its reduced hours practice on January 1, 2004; and Respondent must make whole Linda Weisel and Susan Pollitt for all loss of earnings and other benefits. As to Pollitt, that make whole remedy shall include making her whole for loss of personal leave in order to avoid constructive discharge. Back pay shall be computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in ***F. W. Woolworth Co.***, 90 NLRB 289 (1950), plus interest as computed in ***New Horizons for the Retarded***, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[60]

ORDER

The Respondent, North Carolina Prisoner Legal Services, Inc., at Raleigh, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with unspecified reprisals because of its employees' protected concerted activity.

(b) Threatening its employees that it would withhold a wage increase because of its employees' protected concerted activity.

(c) Announcing the termination of its extended illness benefit practice because of its employees' protected concerted activity.

(d) Threatening its employees with eliminating reduced–hours work schedules because of its employees' protected concerted activity.

(e) Constructively requiring its employee to use leave and constructively discharging its employees because of their union or other protected concerted activity.

(f) In any other like or related manner restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Fully and immediately institute a 6% staff pay increase if one has not been instituted after August 15, 2003; restore its extended illness benefits if that practice has not been reinstated after August 15, 2003; restore its reduced–hours practice if that practice has not been reinstated after January 1, 2004; offer full and immediate reinstatement to Linda Weisel and Susan Pollitt to their former reduced hours jobs without prejudice to their seniority or other rights and privileges; offer full and immediate reinstatement of personal leave time to Susan Pollitt's which she used to avoid constructive discharge; make all employees whole for all losses because Respondent failed to grant a 6% staff pay increase on August 15, 2003; make all

60 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees whole for all losses because Respondent eliminated its extended illness benefits on August 15, 2003 and because Respondent eliminated its reduced hours workweeks on January 1, 2004; and make Linda Weisel and Susan Pollitt whole for all loss of earnings, personal leave and other benefits, computed on a quarterly basis from date of discharge or use of leave, to date of proper offer of reinstatement, less any net interim earning.

(b) Within 14 days from the date of the Order, remove from its files any reference to the unlawful discharge of Linda Weisel and unlawful requirement for Susan Pollitt to use leave, and within 3 days thereafter notify Weisel and Pollitt in writing that this has been done and that Weisel's constructive discharge and Pollitt's use of personal leave to avoid constructive discharge, will not be used against either of them in any way.

(c) Within 14 days after service by the Region, post at its Raleigh, North Carolina facility copies of the attached notice marked "Appendix."[61] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 22, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

_____

Pargen Robertson
Administrative Law Judge

61 If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading **"POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD"** shall read **"POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."**

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten our employees with unspecified consequence because of our employees' protected concerted activity.

WE WILL NOT threaten our employees with termination of their reduced–hours privileges because of our employees' protected concerted activity.

WE WILL NOT terminate our employees' reduced–hours privileges because of our employees' protected concerted activity.

WE WILL immediately reinstate our former practice of reduced–hours employment.

WE WILL make all employees whole for losses suffered because we terminated their reduced–hours privileges on January 1, 2004.

WE WILL NOT withhold a 6% pay raise for our employees because of our employees' protected concerted activity.

WE WILL make all employees whole for losses suffered because we failed to grant them a 6% pay increase on August 15, 2003.

WE WILL NOT eliminate the practice of extended benefits because of our employees' protected concerted activity.

WE WILL make all employees whole for losses suffered because we eliminated the practice of extended benefits on August 15, 2003.

WE WILL NOT constructively discharge or force our employee to use personal leave to avoid constructive discharge because of our employees' protected concerted activity.

WE WILL offer Linda Weisel and Susan Pollitt immediate and full reinstatement to their former reduced–hours jobs.

WE WILL offer Susan Pollitt immediate and full replacement of leave she used because of our illegal elimination of her reduced hours work schedules.

WE WILL immediately make Linda Weisel and Susan Pollitt whole for all lost wages, lost personal leave time and other benefits caused by our unlawful actions.

WE WILL NOT in any like or related manner restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Linda Weisel and our unlawful requirement that Susan Pollitt use personal leave, and **WE WILL**, within 3 days thereafter, notify Weisel and Pollitt in writing that this has been done and our unlawful actions will not be used against either of them in any way.

NORTH CAROLINA PRISONER LEGAL SERVICES, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Republic Square, Suite 200, 4035 University Parkway, Winston–Salem, NC 27106–3323
(336) 631–5201, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (336) 631–5244.